

COPY

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SEP 18 2002

Department of Water Resources

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 17 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

By

Clerk

Deputy Clerk

In Re SRBA

Subcase 36-00005B

Case 39576

STANDARD FORM 4

MOTION TO FILE AMENDED
NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase". You must use a **separate form for each** late or amended Notice of Claim.

By filing a *Motion to File Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

XX I have read SRBA Administrative Order 1, Rules of Procedure (amended Sept. 30, 1996).

My name is: KINGSTON PROPERTIES LP

My address is: 477 SHOUP AVE STE 207
IDAHO FALLS ID 83402

My phone number is: Work: (208) 523-4927 Home: (208)

I am an attorney representing:

My name is: Patrick D. Brown

My address is: Hutchinson & Brown, LLP
104 Lincoln Street
P.O. Box 207
Twin Falls, ID 83303

My phone number is: (208) 733-9300 My fax number is: (208) 733-9343

MOTION TO FILE LATE NOTICE OF CLAIM

A Motion to File Late Notice of Claim will require a hearing before the Presiding Judge.

X I did not file a Notice of Claim to the use of water in the SRBA because:

The Motions for Amended Claims for Water Right Nos. 36-00003B, 36-00005B, and 36-00019B are made in order to conform to the agreed settlement amounts reflected in SF5s. They provide shifting amounts of water among the three enumerated rights primarily to move part of the fish propagation under 36-00003B to 36-00005B and 36-00019B. They also change the period of use and subordinate the fish uses as agreed among all parties to the subcases and IDWR.

_____ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stockwatering use.

_____ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stockwatering use, but you **must** attach a copy of your Notice of Claim.)

1. SF5 Stipulated Elements of a Water Right, Subcase No. 36-00003B.
2. Amended Notice of Claim, Subcase No. 36-00003B.

I have attached:

X A fully completed Notice of Claim (available from IDWR).

___ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. N/A

___ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ N/A.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This Motion will be heard on _____
(insert date and time)
at the SRBA Courthouse, 253 Third Avenue north, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires:

X I must amend my Notice of Claim to the use of water in the SRBA because:

I need to amend it in order to conform to the agreed settlement amount, shifting amounts of water among the various water rights claimed. See copy of SF5 attached.

X I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.
SF5 attached.

I have attached:

X An amended Notice of Claim (available from IDWR).

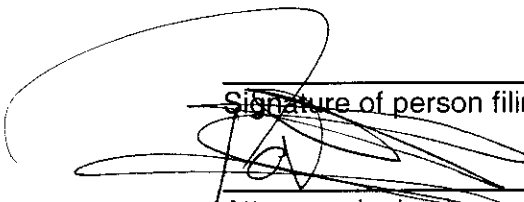
___ Payment of the following additional fees required by DIWR:

VERIFICATION (Must be completed)

State of Idaho)
:ss
County of Twin Falls)

Patrick D. Brown, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

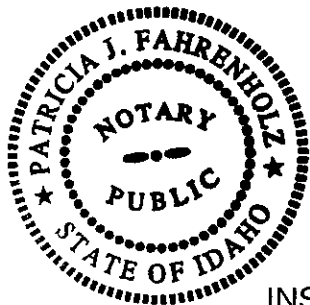
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

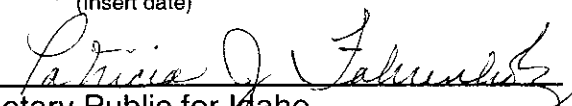


Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on September 4, 2002
(Insert date)





Notary Public for Idaho
Residing at Twin Falls
My commission expires: 11-09-04

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on September 17, 2002, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postabe prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83301

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Mr. Nicholas B. Spencer
Deputy Attorney General
IDWR
1301 North Orchard Street
Boise ID 83705

*PATRICK D. BROWN
HUTCHINSON & BROWN, LLP
P.O. BOX 207
TWIN FALLS, ID 83303-0207*

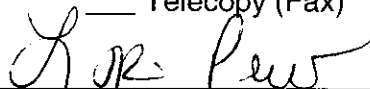
3. If you are filing an Amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you may serve a copy on all parties to that subcase.

Matt Howard
Beeman and Associates
408 West Jefferson
Boise, ID 83702

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Stan and Marie Yvonne Anderson
5151 Umatilla Street
Boise, ID 83709

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

) Subcase No.: 36-5B
)
)
)
)
)
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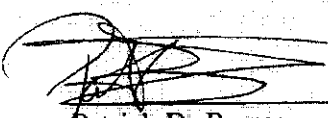
STANDARD FORM 5

**STIPULATED ELEMENTS OF A
WATER RIGHT**

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.


Patrick D. Brown

Attorney for Kingston Properties L.P.

8/26/02
Date

Matt J. Howard

Date

Attorney for North Snake Ground
Water District

Maria Yvonne Anderson

Date

Steve Ollend 8/23/02
IDWR Concurrence Date

Wick Spencer 8-22-02
Approved as to form Date
Attorney for IDWR

08/21/2002

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 36-5B

NAME AND ADDRESS: KINGSTON PROPERTIES LP
477 SHOUP AVE STE 207
IDAHO FALLS ID 83402

SOURCE: BILLINGSLEY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.40 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION:

T07S R13E S11 SESENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
FISH PROPAGATION	01/01 12/31	1.400 CFS
IRRIGATION	02/15 11/30	1.400 CFS
STOCKWATER	01/01 12/31	0.050 CFS

THE PORTION OF THIS RIGHT FOR FISH PROPAGATION PURPOSES IS SUBORDINATED TO ALL GROUND AND SURFACE WATER RIGHTS WITH PRIORITY DATES OF AUGUST 15, 2002, OR EARLIER.

PLACE OF USE:

FISH PROPAGATION Within GOODING County

T07S R13E S27	SWNW	T07S R13E S28 Lot 4	SWNE
T07S R13E S28	SENE		

IRRIGATION Within GOODING County

T07S R13E S27	SWNW	24.0	T07S R13E S27	NWSW	9.0
T07S R13E S28 Lot 4	SWNE	9.0	T07S R13E S28	SENE	25.0
T07S R13E S28	NESE	40.0	T07S R13E S28 Lot 5	NWSE	22.0

STOCKWATER Within GOODING County

T07S R13E S27	SWNW	T07S R13E S27	NWSW
T07S R13E S28 Lot 4	SWNE	T07S R13E S28	SENE
T07S R13E S28	NESE	T07S R13E S28 Lot 5	NWSE

129 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 129 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 36-00003B, 36-00005B & 36-00019B.

08/21/2002

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE PORTION OF THIS WATER RIGHT FOR FISH PROPAGATION PURPOSES SHALL NOT BE ASSERTED, DELIVERED, USED, ENFORCED, EFFECTIVE, OR OTHERWISE RECOGNIZED IF IT WOULD CAUSE OR REQUIRE IN ANY WAY OR OTHERWISE RESULT IN, EITHER DIRECTLY OR INDIRECTLY, CURTAILMENT OF, INJURY TO, OR MITIGATION FROM ANY SURFACE AND GROUND WATER RIGHTS EXISTING AS OF AUGUST 15, 2002.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE. THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: Decreed

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

CERTIFICATE OF SERVICE

I certify that on _____, 2002, I caused to be served true and correct copies of this Standard Form 5, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Patrick D. Brown
Hutchinson & Brown, LLP
P.O. Box 207
Twin Falls, ID 83303-0207

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Matt J. Howard
Beeman & Associates
408 W. Jefferson
Boise, ID 83702

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Maria Yvonne Anderson
1945 S. Weimaraner Way
Meridian, ID 83642

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Signature of person or attorney mailing the form

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 36-00005B

Date Received

Receipt Number

AMENDED

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Kingston Properties, LP Phone (208) 522-2365

Mailing Address 477 Shoup, Suite 207, Idaho Falls, ID Zip 83402

2. Date of Priority (Only one (1) per claim) 09-10-1884

3. Source of water supply (a) Billingsley Creek
which is tributary to (b) Snake River

4. a. Location of existing point of diversion is: Township 07S Range 13E Section 11,
SE 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of Gooding

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

Water is diverted through the Buckeye Ditch.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 02-15 to 11-30 amount 1.40 or _____

For Stock Water purposes from 01-01 to 12-31 amount .05 or _____

For Fish Propagation purposes from 01-01 to 12-31 amount 1.40 or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.40 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Stockwater, Fish Propagation

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7S	13E	27									X								9.0
7S	13E	27							X										24.0
7S	13E	28			X														9.0
7S	13E	28													X				40.0
7S	13E	28				X													25.0
7S	13E	28															X		22.0
7S	13E	27							S										

Total number of acres irrigated 129

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
36-00003B, 36-00003K, 36-00005B, 36-00019B or None ()

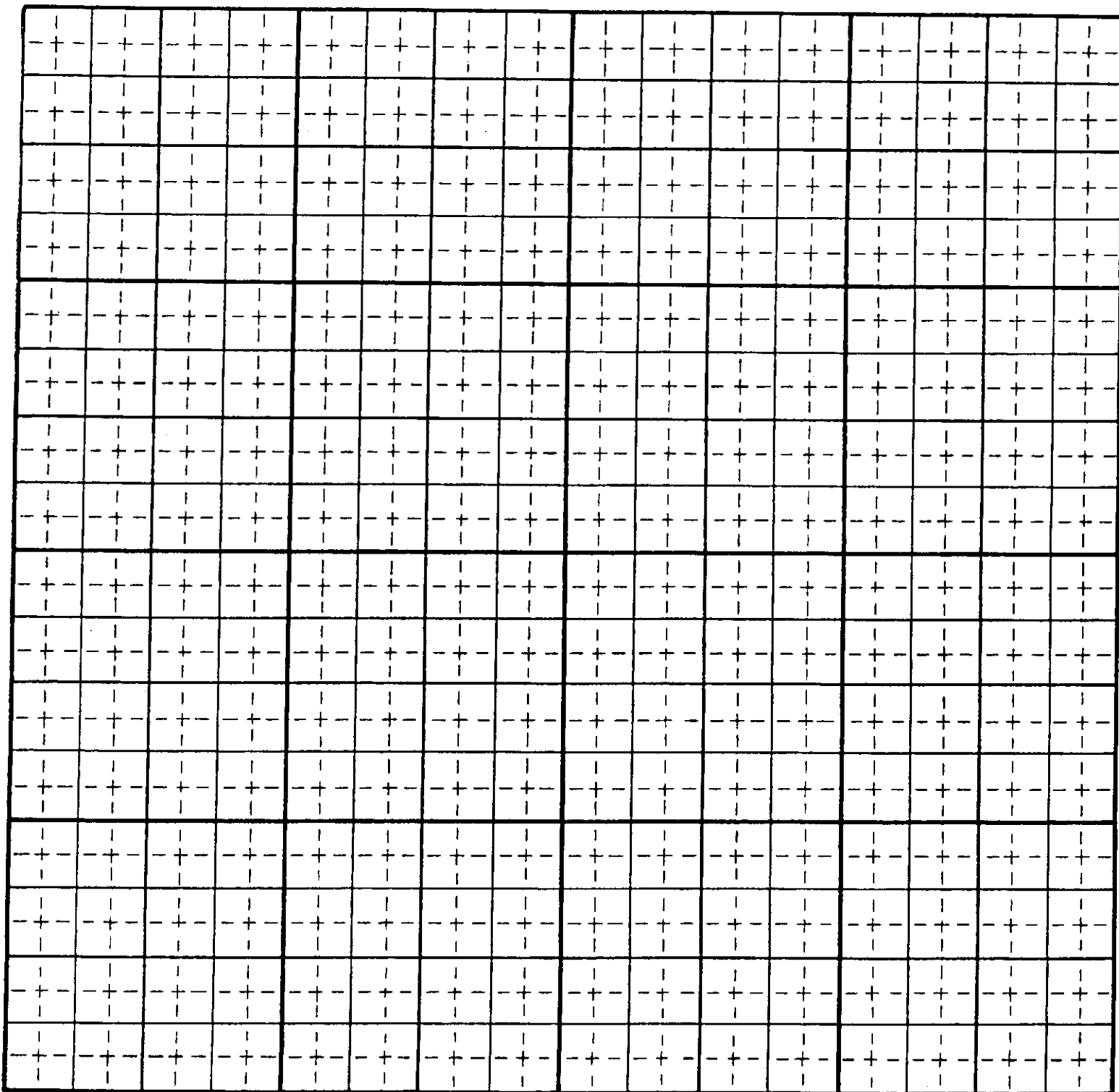
14. Remarks: All four of these rights are used in conjunction with each other.

Last Name Kingston Ident No. 36-00005B

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

SEE ATTACHED MAP.



Last Name Kingston Ident No. 36-00005B

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree X
If applicable provide IDWR Water Right Number 36-00005B
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) _____

Date

Patrick D. Brown
Hutchinson & Brown

Date

P.O. Box 207, Twin Falls, ID 83303-0207

For Organizations: I do solemnly swear or affirm that I am _____

Title

of _____, that I have signed the foregoing
Organization

document in the space below as _____

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____

Date _____

State of Idaho/or _____)

SS.

County of Twin Falls)

Subscribed and sworn to before me this _____

4th

day of

September 18 2002.

Notary Public

Residing at Twin Falls

My Commission Expires

11-09-04

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Brown will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

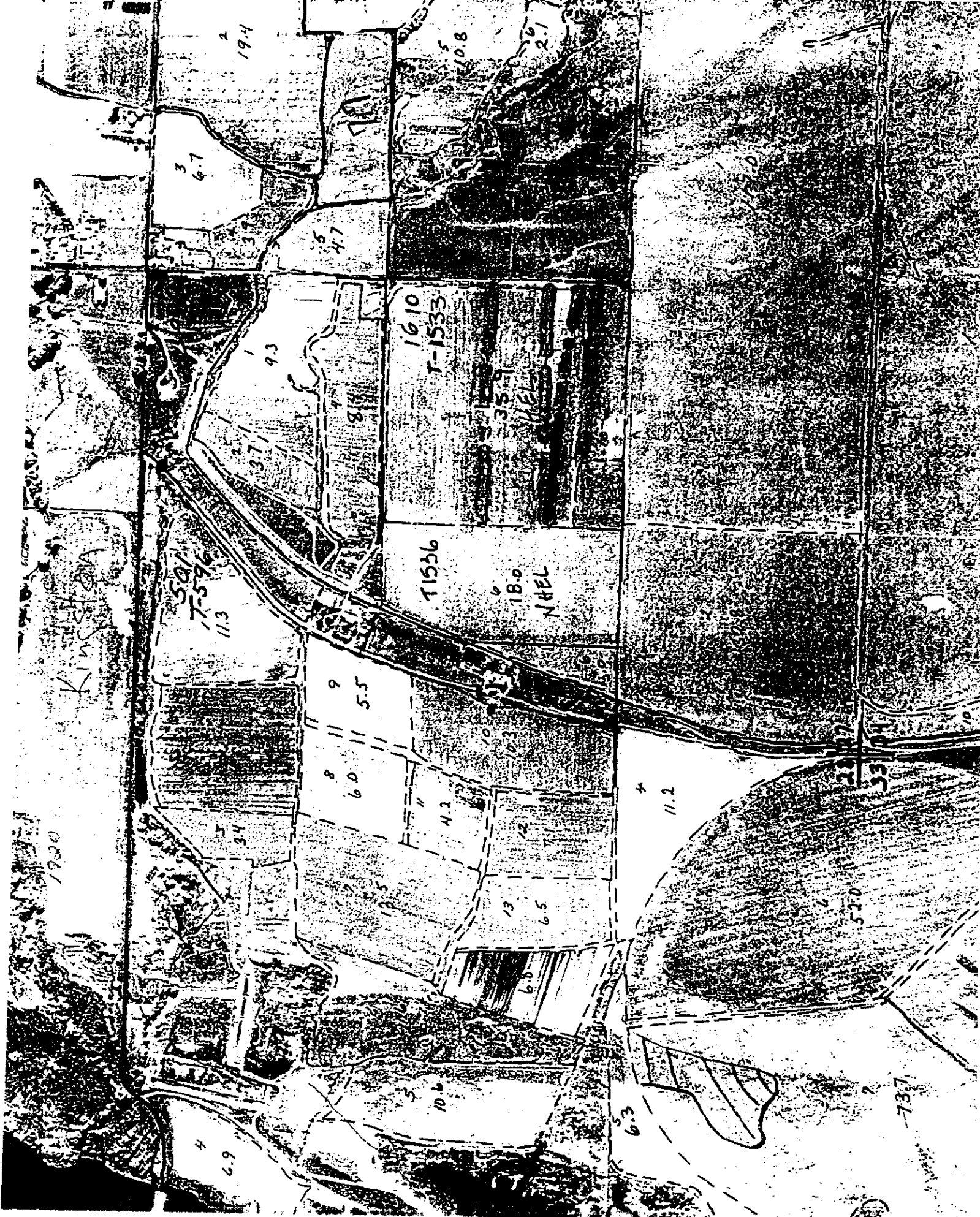
Hutchinson & Brown, LLP

Address P.O. Box 207, Twin Falls, ID 83303-0207

Date

9/4/02

Last Name Kingston Ident. Number 36-00005B



36-0005B